

House Judiciary Committee Amendment #1

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2543

House Bill No. 2370*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting the amendatory language of SECTION 1 and substituting instead the following:

At the request of a party the court shall order witnesses, including rebuttal witnesses, excluded at trial or other adjudicatory hearing. In the court's discretion, the requested sequestration may be effective before voir dire, but in any event shall be effective before opening statements. The court shall order all persons not to disclose by any means to excluded witnesses any live trial testimony or exhibits created in the courtroom by a witness. This section does not authorize exclusion of (1) a party who is a natural person, or (2) a person designated by counsel for a party that is not a natural person, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause. This section does not forbid testimony of a witness called at the rebuttal stage of a hearing if, in the court's discretion, counsel is genuinely surprised and demonstrates a need for rebuttal testimony from an unsequestered witness.

SECTION 2. The Tennessee Code Commission is directed to publish the following as comments of the General Assembly to Section 1 of this act:

General Assembly Comments

This section contains three changes from Rule 615 of the Tennessee Rules of Evidence. One gives the court discretion to delay sequestration until after voir dire, perhaps because of a need to ask prospective jurors whether they know the witnesses.

House Judiciary Committee Amendment #1

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2543

House Bill No. 2370*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

The second change modifies the second category of persons not sequestered. A “party that is not a natural person” includes, among other entities, a corporation and the State of Tennessee. Consequently, the prosecuting attorney could designate a crime victim, a relative of the crime victim, or an investigating officer. Like category (1), category (2) is a matter of right. Category (3), in contrast, is a matter of judicial discretion.

The third change is addition of a sentence at the end of the section to give the court authority to make an exception for rebuttal witnesses. Such an exception requires, however, a dual showing of genuine surprise and demonstrable need.

Note that the section prohibits disclosure of live testimony “by any means”. A lawyer may mention subject matter to a witness not yet called, even though the subject matter has been raised by evidence. Care must be taken, however, to avoid implying to the potential witness what an earlier witness said from the stand.